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3  
4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 T.K., et al.,

8 Plaintiffs,

9 v.

10 FREDERICK DAVID STANLEY,

11 Defendant.

CASE NO. C16-5506 BHS

ORDER GRANTING MOTION  
TO STAY PROCEEDINGS

12  
13 This matter comes before the Court on the motion (Dkt. 26) of Frederick Stanley  
14 (“Defendant”). The Court has considered the motion and the remainder of the file and  
15 hereby grants the motion for the reasons stated herein.

16 **I. BACKGROUND**

17 On April 9, 2014, T.K., G.G., B.G., T.A., A.A., J.A., K.W., and P.W. (“Plaintiffs”)  
18 filed a complaint in *Tiffany Kelso, et al. v. Olympia School District, et al.*, Thurston  
19 County Superior Court No. 14-2-00678-8 (“*T.K. I*”), against Defendant, Olympia School  
20 District, Robert Hodges, William Lahmann, and Jennifer Priddy. Dkt. 13-1. G.G., A.A.,  
21 and P.W. are minors. *Id.* The complaint stated a claim for negligence, negligent infliction  
22

1 of emotional distress, and violations of state mandatory reporting laws. Dkt. 13-1 at 16–  
2 19.

3 On June 21, 2016, Plaintiffs filed their present complaint against Defendant. Dkt.  
4 1. The complaint claims a “violation of the Ninth and Fourteenth Amendments and 42  
5 USC § 1983.” *Id.* at 19. On July 15, 2016, the Thurston County Superior Court entered  
6 summary judgment in *T.K. I* dismissing the claims of the minor plaintiffs G.G., A.A., and  
7 P.W. Dkt. 13-2. On August 11, 2016, Plaintiffs filed a notice of discretionary review.  
8 Dkt. 15 at 126–28.

9 On July 25, 2016, Defendant filed a motion to dismiss “based upon res  
10 judicata/claim-splitting.” Dkt. 12. On August 15, 2016, Plaintiffs responded. Dkt. 14. On  
11 August 19, 2016, Defendant replied. Dkt. 16. On October 11, 2016, the Court entered an  
12 order denying Defendant’s motion to dismiss. Dkt. 22. In its order, the Court explained  
13 that the State Court proceedings were not yet final, and that “numerous courts have  
14 determined that the proper analysis to determine whether a concurrent state action bars a  
15 related federal action is a matter appropriately considered in the context of abstention, not  
16 claim splitting.” Dkt. 22 at 9. Therefore, the Court concluded, “[a]bsent any argument on  
17 [*Colorado River*] or some affirmative defense that might bar recovery on the claims, the  
18 Court denies Defendant’s motion.” *Id.* at 10. On October 21, 2016, Defendant moved for  
19 “clarification and/or reconsideration,” which the Court denied. Dkts. 23, 24.

20 On March 22, 2017, Defendant filed the present motion, seeking relief on the basis  
21 of the *Colorado River* doctrine. Dkt. 26. On April 3, 2017, Plaintiffs responded. Dkt. 27.  
22 On April 7, 2017, Defendant replied. Dkt. 29.

1 On May 23, 2017, the Court entered an order requesting supplemental briefing on  
2 the issue of whether parallel litigation exists in state court. Dkt. 30. Specifically, the  
3 Court requested that the parties address whether a state court action was ever commenced  
4 against Defendant and how that fact would affect the Court's analysis.

## 5 II. DISCUSSION

6 Defendant moves to stay or dismiss this action pursuant to the *Colorado River*  
7 doctrine. Dkt. 26. Plaintiffs are opposed to a stay or dismissal, but argue that a stay is the  
8 appropriate remedy should the Court determine that the *Colorado River* doctrine applies.  
9 Dkt. 27.

10 Under the *Colorado River* doctrine, federal courts must exercise their discretion to  
11 determine whether they will hear a case when a parallel action is pending in state court.  
12 *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976)  
13 ("*Colorado River*"). This decision is to be driven by "considerations of wise judicial  
14 administration, giving regard to conservation of judicial resources and comprehensive  
15 disposition of litigation." *Colorado River*, 424 U.S. at 817 (quotation omitted). If the  
16 Court determines that it should defer to parallel state court proceedings, the appropriate  
17 remedy is to stay the federal action pending the outcome of the state court litigation.  
18 *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 243 (9th Cir. 1989). This remedy  
19 "ensures that the federal forum will remain open if for some unexpected reason the state  
20 forum does turn out to be inadequate." *Id.* (quotation omitted).

21 The first step in applying the *Colorado River* doctrine is to determine whether  
22 there exists "parallel" state court litigation. *See Holder v. Holder*, 305 F.3d 854, 868 (9th

1 Cir. 2002); *Intel Corp. v. Advanced Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir.  
2 1993). If this threshold inquiry is satisfied, the Court then engages in a multi-factor  
3 balancing test to determine whether staying the federal action pending the outcome of the  
4 state court litigation serves the interest of “wise judicial administration.” *See Nakash v.*  
5 *Marciano*, 882 F.2d 1411, 1415 (9th Cir. 1989).

6 **A. Parallel Action**

7 There can be no doubt that there exists a state court proceeding that is closely  
8 related to this action. In *T.K. I*, Plaintiffs filed a lawsuit alleging claims of negligence,  
9 negligent infliction of emotional distress, and a violation of state mandatory reporting  
10 laws against Defendant, several other individuals, and Defendant’s employer. Dkt. 34-1  
11 at 2. Those claims arose from the same nexus of facts surrounding the alleged sexual  
12 abuse of the minor plaintiffs by Gary Shafer, a bus driver for Defendant’s employer,  
13 Olympia School District. *Id.* at 2–20. However, although this case and *T.K. I* are  
14 obviously related, the question before the Court is whether *T.K. I* constitutes parallel  
15 litigation for the purpose of applying the *Colorado River* doctrine.

16 The parallelism required under the *Colorado River* doctrine “contemplates that the  
17 federal court will have nothing further to do in resolving any substantive part of the case”  
18 once the state court renders a decision. *Holder*, 305 F.3d at 868 (quoting *Intel Corp.*, 12  
19 F.3d at 913). “Under the rules governing the *Colorado River* doctrine, the existence of a  
20 substantial doubt as to whether the state proceedings will resolve the federal action  
21 precludes the granting of a stay.” *Intel Corp.*, 12 F.3d at 913.  
22

1 Whether *T.K. I* will control the outcome of this case under a theory of res judicata  
2 has already been argued at great length by the parties when addressing Defendant's  
3 previous motion to dismiss. *See* Dkts. 12, 14, 17, 23. In denying that motion, the Court  
4 based its decision on the fact that Defendant had failed to establish that the partial  
5 summary judgment in *T.K. I* constitutes a final order under the standard articulated in  
6 *Ensley v. Pitcher*, 152 Wn. App. 891 (2009). Dkt. 22 at 4–7. However, because the  
7 absence of a final judgment was dispositive of whether res judicata presently bars this  
8 action, the Court did not have occasion to assess whether the future resolution of *T.K. I*  
9 would result in res judicata. *See id.* at 7 n.1. Now, having the occasion to consider the  
10 question, the Court concludes that the resolution of *T.K. I* will almost certainly result in  
11 res judicata, thereby rendering *T.K. I* a parallel proceeding for the purposes of the  
12 *Colorado River* doctrine.

13 28 U.S.C. § 1738 mandates that the Court follow Washington law in evaluating  
14 the potential res judicata effect of *T.K. I*. *Allen v. McCurry*, 449 U.S. 90, 96 (1980) (citing  
15 28 U.S.C. § 1738). Under Washington law, res judicata exists when a previous and  
16 subsequent action are identical as to (1) persons and parties, (2) causes of action, (3)  
17 subject matter, and (4) the quality of the persons for or against whom the claim is made.  
18 *Karlberg v. Otten*, 167 Wn. App. 522, 536 (2012). Regarding the first and fourth  
19 elements of the res judicata test, the fact that Defendant was dismissed from *T.K. I*  
20 without prejudice complicates the Court's analysis. As indicated by the parties'  
21 supplemental briefing and declarations, Defendant was dismissed from *T.K. I* for lack of  
22 personal jurisdiction. *See* Dkts. 31, 32, 34-1. This means that Defendant was dismissed

1 from *T.K. I* without prejudice and that he will not be a party to any final order or  
2 judgment in *T.K. I*. Similarly, the Court’s analysis of the second element is complicated  
3 by the fact that Plaintiffs presently assert liability under a § 1983 theory of recovery that  
4 was not claimed in *T.K. I*.

5         Nonetheless, the Court concludes that the outcome of the res judicata analysis in  
6 this case is governed by the same line of reasoning that formed the basis for its decision  
7 in *K.H. v. Olympia Sch. Dist.*, C16-5507 BHS, 2016 WL 5871708 (W.D. Wash. Oct. 7,  
8 2016) (“*K.H.*”). In *K.H.*, different plaintiffs brought a nearly identical suit against  
9 Defendant, the School District, and other individually named plaintiffs based on the same  
10 alleged conduct related to the pattern of sexual abuse practiced by Gary Shafer. *See id.*  
11 Ultimately, the Court concluded that, in light of a previous state court lawsuit between  
12 the plaintiffs and the School District, the plaintiffs’ federal lawsuit asserting § 1983  
13 claims was barred by res judicata.

14         As it did in *K.H.*, the Court concludes that the first and fourth elements of the res  
15 judicata test are satisfied because Defendant is in privity with the School District. Under  
16 Washington law, when a defendant was a nonparty to the resolution of a previous case,  
17 res judicata applies only if the defendant is in privity with a party. *Feature Realty, Inc. v.*  
18 *Kirkpatrick & Lockhart Preston Gates Ellis, LLP*, 161 Wn.2d 214, 224 (2007)  
19 (“Different defendants constitute the same party for res judicata purposes if they are in  
20 privity. A nonparty is in privity with a party if that party adequately represented the  
21 nonparty’s interest in the prior proceeding.”). Such privity exists when an employer’s  
22 “liability in the first complaint . . . was premised entirely on the actions of its employees”

1 and the employer “adequately represented [its employees’] interests in the prior  
2 proceeding.” *K.H. v. Olympia Sch. Dist.*, 2016 WL 5871708 at \*4 (quoting *Kuhlman v.*  
3 *Thomas*, 78 Wn. App. 115, 121–22 (1995)). In *T.K. I*, the School District’s liability was  
4 premised entirely on the conduct of its employees, including Defendant. *See* Dkt. 32-1 at  
5 17–19 (repeatedly alleging liability of “Defendant District, through its employees”). This  
6 alleged conduct is the same alleged conduct that forms the basis of the present lawsuit.  
7 *See* Dkt. 1. Additionally, the School District’s defense in *T.K. I* adequately represented  
8 the interests of Defendant because the District would be liable for any negligence  
9 attributed to Defendant under a theory of respondeat superior. Moreover, the District has  
10 already successfully obtained summary judgment in *T.K. I* on a theory that Plaintiffs  
11 cannot establish that the minors in this lawsuit suffered any injury or abuse at the hands  
12 of Gary Shafer. Dkt. 32-5 at 11–30; Dkt. 32-7 at 24–31; Dkt. 34-1 at 33–36.

13         Likewise, the Court determined in *K.H.* that the plaintiffs’ § 1983 claims were  
14 precluded by the previous state court judgment, notwithstanding the fact that the § 1983  
15 claims had not been previously asserted. *K.H.*, 2016 WL 5871708 at \*6. Under  
16 Washington law, “a matter may not be relitigated, or even litigated for the first time, if it  
17 could have been raised, and in the exercise of reasonable diligence should have been  
18 raised, in the prior proceeding.” *Kelly-Hansen v. Kelly-Hansen*, 87 Wn. App. 320, 329  
19 (1997)). Just as in *K.H.*, the claims in this case and *T.K. I* turn on substantially the same  
20 evidence, seek to remedy the same alleged harm, and both arise out of the same  
21 transactional nucleus of facts. *See Hayes v. City of Seattle*, 131 Wn.2d 706, 713 (1997).  
22 With the exercise of any reasonable diligence, Plaintiffs’ § 1983 and state law claims

1 could and should have been raised in the same litigation. Therefore, the Court finds that  
2 the causes of action in this case and in *T.K. I* are identical for the purposes of res judicata.

3 In determining whether this case and *T.K. I* involve the same subject matter, “the  
4 critical factors seem to be the nature of the claim or cause of action and the nature of the  
5 parties.” *Hayes*, 131 Wn.2d at 712–13. Although “the same subject matter is not  
6 necessarily implicated in cases involving the same facts,” *Mellor v. Chamberlin*, 100  
7 Wn.2d 643, 646 (1983), both this case and *T.K. I* “seek a monetary remedy for the  
8 allegedly tortious failure of Olympia School District employees to adequately protect [the  
9 minor plaintiffs] from a sexual predator.” *K.H.*, 2016 WL 5871708 at \*7. Moreover, at  
10 issue in the *T.K. I* summary judgment order, currently on appeal, is the issue of whether  
11 the minor plaintiffs actually suffered injury because of Gary Shafer. Dkt. 32-5 at 11–30;  
12 Dkt. 32-7 at 24–31; Dkt. 34-1 at 33–36. Whether Gary Shafer sexually abused the minor  
13 plaintiffs is a dispositive issue that goes to the very heart of the present lawsuit.  
14 Therefore, the Court finds that the “nature” of the claims in this case and *T.K. I* are the  
15 same and that both cases involve the same subject matter.

16 Based on the foregoing, the Court concludes that the resolution of *T.K. I* by the  
17 Washington state courts will almost certainly result in res judicata on the present claims,  
18 thereby leaving the Court with “nothing further to do in resolving any substantive part of  
19 the case.” *Holder*, 305 F.3d at 868. Any doubt the Court may have about whether the  
20 resolution of *T.K. I* will be dispositive in this case is insubstantial. Therefore, *T.K. I*  
21 constitutes a parallel state action for the purposes of the *Colorado River* doctrine.  
22

1 **B. Balancing Test**

2 Having determined that there is a pending, parallel state court action, the Court  
3 next engages in a balancing test to determine whether a stay under the *Colorado River*  
4 doctrine is warranted. The factors the Court must consider include: (1) whether the state  
5 court first assumed jurisdiction over a property; (2) the relative convenience of the two  
6 forums; (3) the desirability of avoiding piecemeal litigation; (4) the order in which  
7 jurisdiction was obtained in the concurrent forums; (5) whether federal law or state law  
8 provides the rule of decision on the merits; (6) whether the state court proceedings are  
9 inadequate to protect the federal litigant's rights; and (7) whether exercising jurisdiction  
10 would promote forum shopping. *Holder*, 305 F.3d at 870. "[T]he decision whether to  
11 dismiss a federal action because of parallel state-court litigation does not rest on a  
12 mechanical checklist, but on a careful balancing of the important factors as they apply in  
13 a given case, with the balance heavily weighted in favor of the exercise of jurisdiction."  
14 *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1368 (9th Cir. 1990) (quoting *Moses*  
15 *H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (U.S. 1983)).

16 **1. Jurisdiction Over the Res and Inconvenience of Forum**

17 The parties agree that the first two factors do not weigh in favor of applying the  
18 *Colorado River* doctrine to this case. Dkt. 26 at 7; Dkt. 27 at 12; Dkt. 29 at 5. The Court  
19 agrees. In this case, Plaintiffs seek monetary damages for their alleged injuries, but  
20 "money . . . is not the sort of tangible physical property referred to in *Colorado River*."  
21 *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1258 (9th  
22 Cir. 1988). Because this case does not involve a res as contemplated in *Colorado River*,

1 this factor does not have any bearing on the Court’s analysis. *Travelers Indem.*, 914 F.2d  
2 at 1368. Also, this case and *T.K. I* are pending in adjacent counties, meaning that neither  
3 this court nor the state court are more convenient. *See Peak Performance Nutrition v.*  
4 *Media Power, Inc.*, 669 F. Supp. 2d 1176, 1180 (C.D. Cal. 2009).

## 5           **2.       Piecemeal Litigation**

6           In *Colorado River*, the Supreme Court’s “chief concern was with avoiding  
7 piecemeal litigation.” *United States v. Morros*, 268 F.3d 695, 706 (9th Cir. 2001).  
8 “Piecemeal litigation occurs when different tribunals consider the same issue, thereby  
9 duplicating efforts and possibly reaching different results.” *R.R. St. & Co. Inc. v. Transp.*  
10 *Ins. Co.*, 656 F.3d 966, 979 (9th Cir. 2011) (quoting *Am. Int’l Underwriters*, 843 F.2d at  
11 1258).

12           Allowing this case to proceed would surely result in piecemeal litigation. A central  
13 dispositive issue in both this case and the negligence claims in *T.K. I* is whether Gary  
14 Shafer sexually abused the minor plaintiffs. The state trial court in *T.K. I* has already  
15 granted the *T.K. I* defendants’ summary judgment motion on the basis that Plaintiffs  
16 cannot carry their burden of proof in showing any abuse or injury. Dkt. 32-5 at 11–30;  
17 Dkt. 32-7 at 24–31; Dkt. 34-1 at 33–36. If the Court allowed this case to proceed, the  
18 only avenue whereby Plaintiffs could prevail is if the Court reached a different result on  
19 the same issue. Therefore, the Court finds that this factor weighs strongly in favor of  
20 applying the *Colorado River* doctrine.

1           **3.       Order of Jurisdiction**

2           In determining which forum first obtained jurisdiction over the parallel actions, the  
3 Court does not focus on the date when the actions were first filed, but rather, in which  
4 forum the case was first litigated. *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 21  
5 (“[P]riority should not be measured exclusively by which complaint was filed first, but  
6 rather in terms of how much progress has been made in the two actions.”). Shortly after  
7 this case was filed, and before initial pleadings were closed, the state court entered a  
8 partial summary judgment in *T.K. I* on a basis that would be dispositive of the claims in  
9 this case. Dkt. 32-7; Dkt. 34-1. Before this case was even filed, the *T.K. I* parties had  
10 already engaged in substantial discovery and the defendants had already submitted their  
11 summary judgment brief. Dkt. 32-5. Based on the foregoing, the Court determines that  
12 this factor also weighs in favor of staying the case pursuant to *Colorado River*.

13           **4.       Federal or State Law**

14           Analysis of this factor is very straightforward. Plaintiffs’ present claims deal  
15 exclusively with federal law. Dkt. 1. Therefore, the Court finds that this issue weighs in  
16 favor of allowing this case to proceed.

17           **5.       Adequacy of State Court**

18           “A district court may not stay or dismiss the federal proceeding if the state  
19 proceeding cannot adequately protect the rights of the federal litigants.” *R.R. St. & Co.*  
20 *Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 981 (9th Cir. 2011). For instance, staying a case  
21 under *Colorado River* is impermissible if the parties are unable to raise their claims in the  
22 state action due to jurisdictional bars. *See Holder*, 305 F.3d at 869 n. 5. Alternatively,

1 staying a case may be inappropriate if the difference of forum will substantially affect the  
2 interpretation of a contract that is central to the parties' dispute. *Smith v. Cent. Ariz.*  
3 *Water Conservation Dist.*, 418 F.3d 1028, 1034 (9th Cir. 2005).

4 Defendant argues that the state court is adequate to protect Plaintiffs' rights  
5 asserted in this case because their § 1983 claims "are relatively common and capable of  
6 being heard in state court." Dkt. 26 at 14. Plaintiffs' only response is that the state court  
7 proceedings are supposedly inadequate because "[n]one of the causes of action here are  
8 alleged in the State action complaint and vice versa." Dkt. 27 at 13.

9 Plaintiffs are correct that a judgment in *T.K I* will not necessarily protect their  
10 rights under § 1983 because their federal claims are not asserted in that action. Indeed,  
11 some other courts have found that the omission of available § 1983 claims from a state  
12 court complaint would weigh against the decision to enter a *Colorado River* stay. *See,*  
13 *e.g., Sepehry-Fard v. Bank of New York Mellon, N.A.*, 5:12-CV-1260 LHK, 2013 WL  
14 4030837, at \*5 (N.D. Cal. Aug. 5, 2013). However, the Court disagrees with such  
15 reasoning. The fact that Plaintiffs chose not to assert their § 1983 claims in their state  
16 court complaint does not mean that the state court is incapable of hearing those claims  
17 and protecting the Plaintiffs' rights. In fact, to the contrary, Washington state courts  
18 regularly hear § 1983 claims absent removal by a defendant, as federal courts have  
19 original, but not exclusive, jurisdiction over § 1983 claims pursuant to 28 U.S.C. § 1343.  
20 *Allen*, 449 U.S. at 99–100. *See, e.g., Washington Trucking Associations v. State*  
21 *Employment Sec. Dep't*, 393 P.3d 761, 767 (Wash. 2017); *Maytown Sand & Gravel LLC*  
22

1 | *v. Thurston Cty.*, 198 Wn. App. 560 (2017); *Eugster v. Washington State Bar Ass’n*,  
2 | 34345-6-III, 2017 WL 1655737, at \*14 (Wash. Ct. App. May 2, 2017).

3 |       Nothing about the parallel state court forum prevented Plaintiffs from pursuing  
4 | their § 1983 claims in *T.K. I* and adequately asserting their rights; they simply chose not  
5 | to do so. Therefore, because nothing has prevented (or is preventing) Plaintiffs from  
6 | pursuing their § 1983 claims in *T.K. I*, the Court concludes that this factor weighs in  
7 | favor of a *Colorado River* stay.

## 8 |       **6.       Forum Shopping**

9 |       “The final factor to consider is whether the second suit . . . is an attempt to forum  
10 | shop or avoid adverse rulings by the state court.” *Nakash v. Marciano*, 882 F.2d 1411,  
11 | 1417 (9th Cir. 1989).

12 |       The Court concludes that allowing this case to proceed would be allowing  
13 | Plaintiffs to forum shop for the purposes of avoiding an adverse ruling in *T.K. I*. On June  
14 | 17, 2016, the *T.K. I* defendants moved for summary judgment on the bases that (1)  
15 | Plaintiffs’ only evidence of abuse was inadmissible and (2) Plaintiffs failed to serve and  
16 | obtain personal jurisdiction over Defendant Stanley. Dkt. 32-5. Four days later, on June  
17 | 21, 2016, Plaintiffs filed the present action against Defendant. Dkt. 1. Notably, in their  
18 | response to the *T.K. I* summary judgment motion, filed on June 29, 2016, Plaintiffs  
19 | stipulated that the state court lacked personal jurisdiction over Defendant because they  
20 | had failed to perfect service. Dkt. 34-1 at 29 n. 1.

21 |       On July 8, 2016, the state court issued an oral ruling indicating that it was going to  
22 | grant the *T.K. I* defendants’ motion for summary judgement. Dkt. 32-7. On July 15, 2016,

1 the state court entered its written order granting the motion for summary judgment. Dkt.  
2 34-1 at 34. As discussed above, upon reviewing the parties' briefing on the motion for  
3 summary judgment, it is clear that the state courts' order is based on a dispositive issue in  
4 this litigation: namely, whether Gary Shafer abused the minor plaintiffs. Dkt. 32-5; Dkt.  
5 32-7.

6       These circumstances strongly suggest that Plaintiffs' present lawsuit is an attempt  
7 to circumvent the dismissal of Defendant from *T.K. I* on the basis that they had failed to  
8 properly serve him. The fact that Plaintiffs filed the present complaint only after the *T.K.*  
9 *I* defendants moved for summary judgment is suspicious. Further, the Plaintiffs knew that  
10 the dismissal was warranted as to Defendant Stanley, as evidenced by the concession in  
11 their response. Dkt. 34-1 at 29 n.1. Because the dismissal of Defendant from *T.K. I* was  
12 necessarily without prejudice, nothing prevented Plaintiffs from refileing the same claims  
13 against Defendant. Nonetheless, Plaintiffs have now brought their § 1983 claims and  
14 omitted their previously asserted state law claims that were the direct subject of *T.K. I*.  
15 Had they refiled the same claims as they asserted in *T.K. I*, there can be no doubt that a  
16 state court would consider the complaint duplicitous, forcing the Plaintiffs to argue  
17 preclusion issues in state court.

18       Based on the foregoing, the Court concludes that the present litigation appears to  
19 be an attempt at forum shopping in order to avoid the consequences of the adverse state  
20 court ruling in *T.K. I*. Therefore, the Court finds that this factor also weighs in favor of  
21 staying the case.  
22

1 **C. Conclusion**

2 Because *T.K. I* will almost certainly be preclusive of this case, *T.K. I* is a parallel  
3 state court action for the purposes of the *Colorado River* doctrine. Additionally, the Court  
4 has found that factors three, four, six, and seven of the applicable balancing test weigh in  
5 favor of staying this action, while factors one, two, and five do not. On balance, the Court  
6 finds that a stay is warranted. Accordingly, the Court grants Defendant's motion and the  
7 case will be stayed pending the final outcome of *T.K. I*. The Court notes that "[a]  
8 *Colorado River* stay order is appealable as a final order." *Travelers Indem.*, 914 F.2d at  
9 1367.

10 **III. ORDER**

11 Therefore, it is hereby **ORDERED** that Defendant's motion (Dkt. 26) is  
12 **GRANTED**. This proceeding is **STAYED** and the case is administratively closed  
13 pending the resolution of *T.K. I*. The parties may file a motion to reopen the case at any  
14 appropriate time.

15 Dated this 21st day of June, 2017.

16  
17 

18 BENJAMIN H. SETTLE  
19 United States District Judge  
20  
21  
22